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OPINIONREVIEW & OUTLOOK

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# *Alvin Bragg's Political Charge Against Donald Trump*

An indictment of a former President must be for serious offenses with indisputable evidence.

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5:14 pm ET

Alvin Bragg may actually do it. The Manhattan district attorney is by all media accounts preparing to indict Donald Trump for failing to account properly for hush money paid to his alleged mistress, unleashing who knows what political furies. Mr. Trump said Saturday he expects to be arrested on Tuesday and urged his supporters to “protest, protest, protest.” Cry, the beloved country.

It's impossible to overstate Mr. Bragg's bad judgment here. Perhaps the local Democratic DA has discovered some new proof of criminal behavior. But based on the public evidence so far, he would be resurrecting a seven-year-old case that even federal prosecutors refused to bring to court.

As we wrote last week, the charge would appear to be falsifying business records to pay the mistress, Stormy Daniels. That is typically a misdemeanor in New York state, though Mr. Bragg might bump it up to a felony by claiming the falsification was to cover up an illegal campaign-finance donation to Mr. Trump's 2016 presidential campaign.

A key prosecution witness would be Michael Cohen, Mr. Trump's former lawyer who is an admitted felon. Mr. Trump might claim in his defense that his payments were made to shield the affair from his wife. He has publicly denied an affair with Ms. Daniels. Proving intent to break the law will not be easy.

So Mr. Bragg may indict a former President for the first time in American history based on the weakest of charges. He would subject the country to a trial that would be a media circus for

the ages. And he would do so running the risk that a single juror could block a guilty verdict and validate Mr. Trump's claim that this is a political prosecution.

Yes, we know, in America no one is above the law. But prosecutors use their discretion every day not to bring charges for any number of reasons. Mr. Bragg came into office vowing not to charge numerous non-violent crimes against public order.

The prosecution of a former President who is again a candidate for the White House is inherently fraught with political ramifications. A wise prosecutor must consider the potential harm to confidence in the rule of law in bringing a prosecution that at least half the country will deem political. A charge against a former President or current candidate must be for serious offenses with indisputable evidence.

All the more so given that Mr. Bragg is acting here after being criticized for not bringing a case against Mr. Trump on charges related to the finances of the Trump Organization. Two prosecutors quit his office after Mr. Bragg made that decision. One of the prosecutors, Mark Pomerantz, wrote a highly critical book that the media has celebrated. Is Mr. Bragg now wilting under that media and political pressure?

We also know that Democrats want to run against Mr. Trump in 2024. They think he is the easiest candidate to defeat, and so they want to keep Mr. Trump in the political spotlight. An indictment of Mr. Trump now would come as the 2024 presidential race begins in earnest and would put other Republican candidates on the spot. Trump supporters are already demanding that Florida Gov. Ron DeSantis, a likely opponent, refuse to extradite Mr. Trump to New York in defiance of the law.

Mr. Trump's calls for protests are irresponsible, as well as against his self-interest. The smart play would be to follow the law while claiming his innocence. If there is violence amid protests, Mr. Trump will get much of the blame. But Mr. Bragg and his partisan cheerleaders will have touched off the whirlwind.

We don't know the political impact of indicting Mr. Trump, but it's possible it would help his candidacy. Republicans might rally to his defense even after millions had concluded after the GOP's midterm disappointment that it is time for a new nominee. Democrats have used legal investigations and impeachment against Mr. Trump for six years, and each time it failed to knock him out. As we have argued all along, the proper way to defeat Mr. Trump is through the ballot box.

As a provincial progressive from New York City, Mr. Bragg may not understand the political forces he is unleashing. He might want to consult the satirical wisdom of the Babylon Bee headline on Twitter: “Manhattan DA Announces Plan to Get Trump Elected in 2024.”

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